

REMARKS

The present Request for Continued Examination is timely in that it is being filed within two months of the Decision by the Board of Patent Appeals, issued February 23, 2010, and before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action (i.e. within 60 days). *See*, M.P.E.P. §706.07(h), Section XI. A. (“The filing of an RCE (accompanied by the fee and a submission) after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit (Federal Circuit) or the commencement of a civil action in federal district court, *will also result in the finality of the rejection or action being withdrawn and the submission being considered*. Generally, the time period for filing a notice of appeal to the Federal Circuit or for commencing a civil action is within two months of the Board’s decision. *See* 37 CFR 1.304 and MPEP § 1216. *Thus, an RCE filed within this two month time period and before the filing of a notice of appeal to the Federal Circuit or the commencement of a civil action would be timely filed*”; emphasis added).

The present Amendment amends all independent claims in accordance with certain points raised in the Decision on Petition. Thus the present Request for Continued Examination is timely, the appropriate fee is being paid and the present submission amends all independent claims. The result is that the finality of the January 26, 2007 Office Action must be withdrawn, and the present submission must be considered. M.P.E.P. §706.07(h).

Claims 43-99 were pending in the current application. Applicants have amended claims 43, 55, 57, 65, 78, 90, and 92. Reexamination and reconsideration of all pending claims are respectfully requested.

35 U.S.C. § 103

The Office Action rejected claims 43-51, 53-74, 76-86, and 88-99 under 35 U.S.C. §103 based on U.S. Patent Application 2001/0040722 to Shafer et al. (“Shafer

722”) in view of U.S. Patent 4,108,794 to Yonekubo (“Yonekubo”). Dependent claims 52, 75, and 87 were rejected under 35 U.S.C. §103 based on Shafer 722 in view of Yonekubo, and further in view of Deutsch et al., WO 01/57563 A2.

In general, Applicants have amended the independent claims to recite that the field lens group, focusing lens group, and Mangin mirror group are aligned along a single axis. The Decision on Appeal stated that claim 43 did not “require the Mangin mirror element to be aligned substantially along the axis.” Applicants have included this limitation in claim 43, and have further amended claim 43 to recite “wherein every component of said Mangin mirror group, said field lens group and said focusing lens group is aligned along a received light energy axis along which light energy is received by the objective.” The other independent claims have been amended in a similar manner, and in all instances, language such as “wherein all components of said Mangin mirror group, the field lens group, and the focusing lens group are *aligned along a single received light energy axis*” (claim 78, emphasis added; *see also*, claim 90: “wherein said Mangin mirror group, said focusing lens group, and said field lens group are aligned along a single received light energy axis...”) has been employed.

The Shafer reference does not show this. Shafer 722 is a broad band DUV/VUV catadioptric imaging system using an off-axis implementation. Shafer 722, paragraph [0039]. Each Shafer implementation, including the FIG. 7 implementation, shows an off-axis design and components of the objectives disclosed are not aligned along a single axis, and not aligned along a single light energy axis. Indeed, in FIG. 7, lenses provided receive light energy along a vertical axis in the implementation shown, and light energy is provided in a horizontal orientation in other parts of the FIG. 7 objective.

The Office Action, Examiner’s Answer, and Decision on Petition made much of the “substantially aligned” language that had been employed in the claims, and argued that such a limitation was met by Shafer 722. Applicants have amended this language to remove the word “substantially” in the independent claims and submit that by these amendments, the claims differ from the Shafer 722 design. Shafer 722 simply does not

show a design where components such as those claimed are aligned along a single received light energy axis, instead showing various off-axis embodiments.

Yonekubo does not disclose or suggest these aspects of the design. Yonekubo shows an immersion substance used in connection with microscopes. For this reason alone, namely the absence of elements aligned along a single axis as claimed, the claims as amended are allowable.

Applicants continue to dispute the combination of Yonekubo with Shafer 722 in the manner suggested. While Applicants recognize that the Decision on Appeal addressed this issue, the Decision did expressly state that Appellants' argument that "the resultant [combined Yonekubo and Shafer 722] device would yield a poor image and provide inadequate inspection capabilities in the environment claimed'...unless there was extensive experimentation" did not include evidence supporting this assertion. (Decision on Petition, p. 14). As a result of this acknowledgement that evidence may demonstrate the impropriety of combining references in the manner suggested, Applicants expressly reserve the right to introduce relevant evidence on this point and renew this improper combination of references argument should for any reason the presently amended claims be found not patentable.

For the foregoing reasons, Applicants thus respectfully submit that claims 43, 55, 65, 78 and 90, as amended, are allowable over the references of record, and that all claims dependent from these allowable independent claims are allowable as they depend from an allowable base claim.

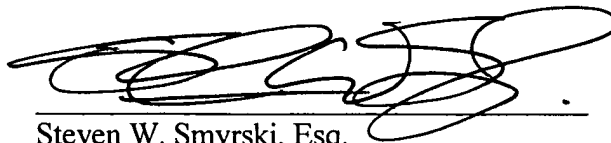
CONCLUSION

In view of the foregoing, it is respectfully submitted that all claims of the present application are in condition for allowance. Reexamination and reconsideration of all of the claims, as amended, are respectfully requested and allowance of all the claims at an early date is solicited.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants believe that no fees are due in accordance with this Response beyond those included herewith. Should any fees be due, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account 502026.

Respectfully submitted,



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